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### **Analysis of Enrolled House Bill 5046**

**Topic:** Rest Room Access for Persons with Certain Medical Conditions  
**Sponsor:** Representative Meisner  
**Co-Sponsors:** Representatives Miller, Meekhof, Accavitti, Wojno, Stahl, Hammon, Brown, Polidori, Donigan, Ebli, Stakoe, Kathleen Law, Johnson, Griffin, Lemmons, Simpson, Ball, Hildenbrand, Sheltroun, Shaffer, Vagnozzi, Angerer, and Gonzales  
**Committee:** House Commerce  
Senate Commerce and Tourism  
**Date Introduced:** July 24, 2007  
**Date Enrolled:** December 19, 2008  
**Date of Analysis:** December 22, 2008

**Position:** The Department of Labor & Economic Growth supports the bill.

**Problem/Background:** Those who suffer from Crohn's disease, colitis, and other bowel and bladder diseases may need immediate access to a rest room. Testimony in committee from sufferers of these diseases noted cases of extreme embarrassment when the sufferer wasn't able to reach the rest room in time. Testimony noted cases where access to a rest room was requested and denied by a store owner, sometimes with disastrous results. The fear of such embarrassment may keep sufferers at home and keep them out of shops. Eight other states reportedly have legislation requiring retailers to provide sufferers of these diseases access to an employee rest room.

**Description of Bill:** The bill allows individuals with certain medical conditions access to an employee toilet facility in a retail establishment. "Eligible medical conditions" is defined to mean Crohn's disease, ulcerative colitis, any other inflammatory bowel disease, irritable bowel syndrome, pregnancy, or any other medical condition that requires immediate access to a toilet facility. The retail establishment is required to allow access to their employee toilet facility if the following conditions are met:

- The customer requesting use of the toilet facility suffers from an eligible medical condition or utilizes an ostomy device.
- Two or more employees are working at the time access is requested.

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DLEG is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

- The customer provides a copy of a statement on a prescription form signed by a doctor that indicates the customer has an eligible medical condition or utilizes an ostomy device.
- The retail establishment does not normally make a rest room available to the public.
- The toilet facility is not located in an area where providing access would create an obvious health or safety risk to the customer or an obvious security risk to the retailer.
- A public rest room is not immediately accessible.

The retailer is not civilly liable for injury or death to a customer using the employee toilet facility under such circumstances, unless all of the following are met:

- The retailer or the employee of the retailer knew or should have known of the condition that caused the injury or death, should have realized that the condition involved an unreasonable risk of harm, and should have expected that the danger would not be discovered or realized.
- There was a failure to exercise reasonable care to make the condition safe or warn the customer or other individual of the condition or risk.
- The customer or other individual did not know or have reason to know of the condition and risk.
- The injury or death occurred in an area that is not accessible to the public.

A retailer that violates the access requirement is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.

A retailer is not required to make physical changes to an employee toilet facility.

A person who falsely makes, publishes, passes, alters or forges the prescription form required by the bill, alters or forges a doctor's signature on such a form, or knowingly possesses a false, forged, or altered prescription form is guilty of a misdemeanor.

## **Summary of Arguments**

**Pro:** The bill gives individuals with certain chronic bowel or bladder problems an opportunity to live a more normal life and engage in activities that most of us take for granted, like shopping at a mall, neighborhood grocery, downtown clothier, or other retailer. Although some retailers will undoubtedly bar access to employee toilet facilities for security or other reasons, most retailers are likely to comply with the spirit of the law and make their toilet facilities available. Many of the thousands of individuals with such diseases reportedly do most of their shopping online. By making it more feasible for these individuals to go shopping at a local establishment the bill may actually increase economic activity in stores.

**Con:** The bill's provisions may increase the likelihood that retailers will deny access to their employee toilet facilities for individuals with the listed medical conditions. A retailer that formerly allowed such access on an occasional basis may feel that a uniform policy is now required and bar access at all times under the provisions of Section 2. The liability provisions, which refer to an "obvious health or safety risk", may also cause some retailers to reevaluate their approach to requests for access. The meaning of "obvious" is uncertain and many retail

establishments may decide to err on the side of caution in making their toilet facilities available. Also, the required prescriptions could be easily forged and retail employees may find it difficult to know the difference between real or forged prescriptions.

### **Fiscal/Economic Impact**

#### **(a) Department**

**Budgetary:** The bills will have no budgetary impact on the department.

**Revenue:** The bills will have no impact on department revenues.

**Comments:**

#### **(b) State**

**Budgetary:** The bills will have no budgetary impact on the state.

**Revenue:** The bills will have no direct impact on state revenue.

**Comments:**

#### **(c) Local Government**

**Comments:** The House Fiscal Agency analysis notes that the fines levied in connection with the misdemeanor penalties in Section 6 will increase penal fines, which benefit local libraries.

**Other State Departments:** No other state departments have expressed interest in the bill.

**Any Other Pertinent Information:** The Crohn's and Colitis Foundation, the United Ostomy Association, and several members of the general public testified in support of the bill. The Michigan Retailer's Association reportedly supports the bill. The National Federation of Independent Business and the Michigan Chamber of Commerce opposed the bill.

**Administrative Rules Impact:** The bill contains no administrative rulemaking authority.